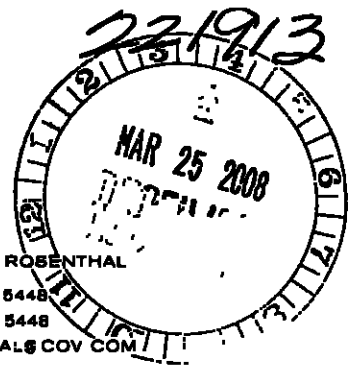


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March 25, 2008

BY HAND

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-00001

ENTERED
Office of Proceedings

MAR 25 2008

Part of
Public Record

Re: Docket No. 42105, *Dairyland Power Cooperative v Union Pacific Railroad Company*

Dear Secretary Quinlan:

Enclosed for filing is an original and ten copies of Union Pacific's Answer to the Complaint filed by Dairyland Power Cooperative

An additional paper copy of this filing is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

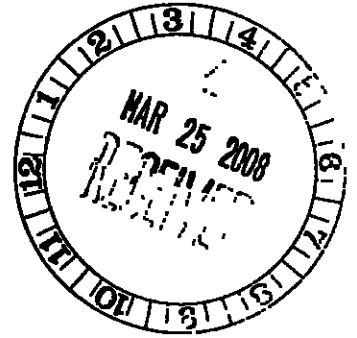
Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal".

Michael L. Rosenthal

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DAIRYLAND POWER COOPERATIVE,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42105

ENTERED
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Public Record

UNION PACIFIC'S ANSWER

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Attorneys for Union Pacific Railroad Company

March 25, 2008

DAIRYLAND POWER COOPERATIVE,
Complainant,
v.
UNION PACIFIC RAILROAD COMPANY,
Defendant.

Defendant Union Pacific Railroad Company (“UP”) hereby answers the Complaint filed by Dairyland Power Cooperative (“Dairyland”) in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

4. UP admits the allegations of the first three sentences of Paragraph 4. UP denies the remaining allegations of Paragraph 4. UP avers by way of further response that it offered Dairyland an opportunity to extend its contract in return for agreeing to modifications that would allow UP to recover its rising fuel costs, but Dairyland declined UP's offer.

5. UP admits that, after Dairyland declined UP's offer to extend its contract, UP established rates for service from the Powder River Basin to Mississippi River terminals for movement beyond by barge to Dairyland's Alma and Genoa Stations under UP Circular 111. UP further admits that Exhibit A to the Complaint appears to be an accurate copy of UP Circular 111, issued August 18, 2005, Item 6630-E of UP Circular 111, issued October 10, 2005, and Dairyland's Circular 111 Option 2 Volume Commitment Certificate, dated October 17, 2005. UP also further admits that UP Circular 111 and Item 6630-E established common carrier rate and service terms for Dairyland. UP denies the remaining allegations of Paragraph 5.

6. UP admits the allegations of Paragraph 6.

7. UP admits the allegations of the first sentence of Paragraph 7 and that Exhibit A to the Complaint contains what appears to be an accurate copy of Dairyland's Circular 111 Option 2 Volume Commitment Certificate, dated October 17, 2005. UP further admits that the quotation in Paragraph 7 appears to accurately quote portions of a Dairyland letter to UP dated October 17, 2005, and that Exhibit B to the Complaint appears to be an accurate copy of the letter. UP denies the remaining allegations of Paragraph 7 because it lacks knowledge or information sufficient to form a belief as to their truth.

8. UP admits that Dairyland has paid UP approximately \$4.5 million in fuel surcharges for its PRB traffic moving under Circular 111 between January 2006 and February 2008, that UP calculated the fuel surcharges using the applicable items in its Circular 6603-series, which is incorporated by reference in UP Circular 111, and that the documents appended to the Complaint in Exhibit A at 14 and in Exhibit C at 2-3 reflect the schedules used to calculate the fuel surcharges. UP denies the remaining allegations of Paragraph 8.

9. Paragraph 9 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations of this Paragraph. UP avers by way of further response that between January 1, 2006 and April 25, 2007, UP applied a rate-based fuel surcharge to the line-haul freight charges paid by Dairyland under Item 6630-E, calculated as a percentage of the base rate in Item 6630-E. UP also avers by way of further response that beginning April 26, 2007, UP applied a mileage-based fuel surcharge to the line-haul freight charges paid by Dairyland under Item 6630-E, calculated based on the number of miles and number of cars used to handle traffic for Dairyland and the number of cents per mile per car that, if the same surcharge were paid by every one of UP's PRB coal customers, would allow UP to recover the incremental fuel costs associated with all of its PRB coal traffic.

10. Paragraph 10 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

11. Paragraph 11 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

DEFENSES

1. The Complaint fails to state a claim for an unreasonable practice in violation of 49 U.S.C. § 10702.

2. The Board lacks jurisdiction to consider the Complaint because UP lacks market dominance with respect to the traffic at issue.

3. The Board lacks jurisdiction to consider the Complaint because the revenue-to-variable cost-ratio of the traffic at issue is less than 1.8.

4. The level of the challenged fuel surcharges is reasonable

5. All or a portion of Dairyland's claim for damages is barred by the statute of limitations.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice and that no relief of any kind be awarded to Dairyland, that UP be awarded its costs, and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

March 25, 2008

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 25th day of March, 2008, I caused a copy of Union Pacific's Answer to be served on counsel for Dairyland by email and first class mail.



Michael L. Rosenthal